IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 629 of 1998
With
SPECIAL CRIMINAL APPLICATION No. 628 of 1998
With
CRIMINAL MISC. APPLICATION No. 9848 of 2001
In
SPECIAL CRIMINAL APPLICATION No. 629 of 1998
With
CRIMINAL MISC. APPLICATION No. 9849 of 2001
In
SPECIAL CRIMINAL APPLICATION No.628 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 & 2 YES; 3 to 5 NO**

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NAVINCHANDRA KANCHANLAL SHAH - Applicant(s)
Versus
STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :

MR PREMAL RACHH FOR M/S THAKKAR ASSOC. for Applicant(s) : 1,
MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 2,4 - 5, 7,
MR NR PARIKH for Respondent(s) : 2,
MR DHARMESH V SHAH for Respondent(s) : 2,
MR BS PATEL for Respondent(s) : 3, 6,
MRS RANJAN B PATEL for Respondent(s) : 3, 6,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 11/04/2007

ORAL JUDGMENT :

1. The petitioners herein are accused persons in the offences registered in Mahidharpura Police Station, Surat vide Criminal Complaint No.132 of 1998 and the prayers made in the main petitions under Article 226 of the Constitution are as under:

> "*16. The petitioners, therefore, pray-*
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> *(A) Your Lordships be pleased to call for the investigation papers of the offence registered as C.R.No.I-132 of 1998 registered with Mahidharpura Police Station and after perusing the same be pleased to hand over or transfer further investigation of the said offence to an independent agency for fair and impartial investigation in view of the fact that crores of rupees of public at large is involved;*
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> *(B) Your Lordships be pleased to hand over or transfer further investigation of the offence registered as C.R.No.I-132 of 1998 with Mahidharpura Police Station to an*

independent agency for fair and impartial investigation in view of the fact that crores of rupees of public at large is involved, pending the admission and final disposal of this application;

(C) Your Lordships be pleased to grant such other and further relief(s) as may be deemed fit in the interest of justice."

2. After Notice being issued in July 1998, hearing of the main petitions was adjourned from time to time till they were admitted on 27.11.2000 with the order as under:

"*Rule. If the investigation is not completed so far, the respondent No.1 is restrained from making further investigation. Office is directed to place the matter for hearing in due course.*"

3. Before that, on 22.10.1999, the following order was made:

"*Petitioner is permitted to join C.B.I., Gandhinagar as respondent No.7. Notice to newly added respondent No.7-CBI, Gandhinagar, returnable on 26.10.1999. D.S.Permitted.*"

3.1 No Notice appears to have either been issued or served, but Misc. Cri. Applications Nos.9848 and 9849 of 2001 were filed on 20.12.2001 in the main petitions without joining CBI as party-respondent No.7. Therefore, it appears that the petitioners had unnecessarily applied for joining CBI as party-respondent and never cared to serve them but hearing was adjourned in the year 1999 on that basis. Thereafter also, hearing has been adjourned from time to time in the main petitions as well as the miscellaneous applications wherein the following prayers are made:

> "*11. The applicant, therefore, prays that:*
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> *(A) Your Lordships be pleased to quash and set aside the action of the respondents of filing the chargesheet against the present applicant in connection with the offence registered as C.R.No.I-132/98 with Mahidharpura Police Station, in the interest of justice;*
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> *(B) Your Lordships be pleased to stay the further proceeding in connection with the offence registered at C.R.No.I-132/98 with Mahidharpura Police*

Station, pending admission, hearing and final disposal of this petition;

(C) Your Lordships be pleased to take appropriate action against the investigating officer for violating the order dtd. 27.11.2000 passed by the Hon'ble High Court in Special Criminal Application No.629/98, in the interest of justice;

(D) Your Lordships be pleased to grant such other and further relief(s) as may be deemed fit in the interest of justice.

(E) Your Lordships be pleased to dispense with the filing of affidavit as the facts are taken from record."

3.2 By virtue of grant of interim relief in terms of para 11 (B) on 24.12.2001, further proceedings even after filing of regular chargesheet have been stayed in the trial court.

4. Arguing the miscellaneous applications first, learned counsel Mr.Premal Rachh, appearing for M/s. Thakkar Associates for petitioners,

submitted that the chargesheet was filed in the trial court on 16.4.2001 despite injunction dated 27.11.2000 and hence it was liable to be quashed only on that ground. He submitted that the investigating agency could not and ought not to have filed the chargesheet after completing investigation in view of the injunction of this court staying further investigation.

5. By filing an affidavit-in-reply on behalf of respondent No.2-original complainant, it is stated by Chief Manager of the complainant-Bank that Police Inspector, Mahidharpura Police Station has, after investigating Criminal Complaint No.132 of 1998 and after examining 48 witnesses, filed chargesheet No.22 of 2001 under sections 467, 468, 406, 420, 471 and 114 of the Indian Penal Code, 1860 against several persons, including the petitioners. That, on account of completion of investigation and filing of chargesheet by the investigating officer, Special Criminal Applications Nos.628 and 629 of 1998 for change of investigation agency did not survive and had become infructuous. It is further averred that those petitions Nos.628 and 629 of 1998 were filed with *mala fide* intention to misdirect the investigation into huge scam of many co-operative societies. It is stated that

nothing is said against the investigating agency, its impartiality and fairness and no suspicion is cast upon the investigating authority and unless a case of investigating agency being purchased, influenced or managed is made out, no order of quashing the chargesheet filed by the investigating agency could be passed. It is stated that the investigating agency had collected evidence which cannot be overlooked or ignored and the petitioners were not prejudiced by the investigation. It is submitted that filing of chargesheet was a mechanical process and not a part of investigation.

6. By filing an affidavit of Shri Jasvindersingh D. Ramgadiya, Police Inspector, it is stated on behalf of the investigating agency that investigation into the aforesaid FIR was carried out by PSI Shri D.B.Gamit from 31.3.1998 till 9.7.1998, by PSI Shri A.T.Borse from 9.7.1998 to 14.2.1999, by PI Shri M.T.Rana between 14.2.1999 to 18.3.1999 and by PI Shri S.M.Gohil between 18.3.1999 to 10.12.1999. That, names of five accused persons were revealed in the FIR but, during investigation done by the officers, name of four other accused persons were revealed and, out of total nine accused, six were arrested. The deponent took charge of

investigation on 10.12.1999 and, during his tenure as investigating officer, two accused persons produced themselves after obtaining orders of anticipatory bail. One accused person who was absconding and arrested in some other offence was arrested by the deponent by a transfer warrant. All those arrests and recording of statements were concluded by 27.11.2000 "*as the last of the accused who was arrested by transfer warrant was remanded to police custody by learned magistrate for the period between 19.11.2000 and 27.11.2000*" (sic). Thus, the investigation was completed as on 27.11.2000 and thereafter no investigation has proceeded any further. It is stated by him on oath that, by the time the aforesaid interim order was made in the main petitions, investigation was already completed and superior officer of the deponent thought it fit that some progress be made in all the pending cases in which investigation was pending or concluded. Therefore, permission was granted to him in writing to file chargesheet on 7.4.2001 and chargesheet was filed on 16.4.2001 after preparing all the papers for the accused. The case was committed on 18.4.2001 and was given C.C.No.851 of 2001. Copies of the chargesheet were also served upon all the accused persons in April, 2001 as per his information. It is submitted that no prejudice is caused to the

petitioners.

7. It was submitted by learned A.P.P. that, as held by Andhra Pradesh High Court in ***Public Prosecutor, High Court, Hyderabad v. M.Prasad [1978 Cri.L.J. 63],*** filing of chargesheet is not a part of investigation and, therefore, there was no violation of the interim order of this court.

8. Arguing the main petitions, learned counsel for the petitioners initially fairly conceded that, in view of completion of investigation and filing of chargesheet, the prayers in the petitions could not survive and could not be pressed. However, he insisted that, in view of the factual averments made by the petitioners in the petitions, the alleged offences were required to be further investigated by an independent agency in the larger public interest.

9. In view of the provisions of sub-section (8) of section 173 of the Code of Criminal Procedure, 1973, it is always open to the investigating agency to make further investigation and submit report thereof. However, in the facts of the present case and in view of the stand taken by the original complainant,

there is no case for issuing a direction for further investigation. Neither in the main petitions nor in the miscellaneous applications filed therein are any averments or prayers for ordering further investigation even after submission of the report of investigation.

10. It clearly appears from the above summary of facts and proceedings that the original petitions have not been pursued with any genuine interest or for a particular relief, but the conditional and qualified order dated 27.11.2000 restraining further investigation has been put to the use of filing of miscellaneous applications during pendency of which the trial has unnecessarily been stayed even after filing of the chargesheet. Although, as submitted by learned counsel for the petitioners, the entire delay of about seven years in the proceedings before the trial court could not be attributed solely to the petitioners, it is still an apparent case of abuse of the process of court and unnecessary and unjustified delay of the proceedings in the trial court.

11. As discussed hereinabove, no case is made out to quash the chargesheet or set aside the action of the respondents of filing the chargesheet, as prayed in para 11 (A) of the

miscellaneous applications. Therefore, the main petitions as well as the miscellaneous applications filed therein are dismissed and Rule is discharged with costs of Rs.10,000/- to be paid by each of the petitioners to respondent No.2 who appears to have been unnecessarily dragged to this court as the original complainant.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)